A JOURNAL OF CHURCH AND SOCIETY

Social Progress

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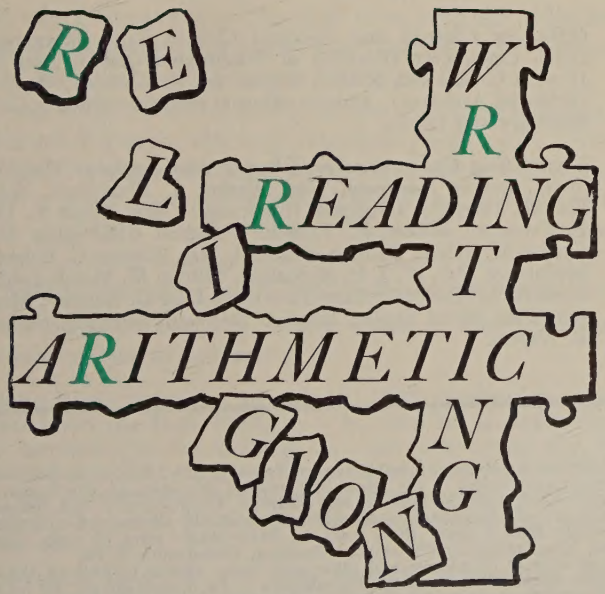

Religion in the Schools?

DECEMBER 1960

Social Progress

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Artwork in this issue is by Tom Arthur.

Office of Church and Society: Clifford Earle, Margaret E. Kuhn, Helen Lineweaver (Director of Washington Office), John H. Marion, Howard C. Maxwell, J. Metz Rollins, Jr., H. B. Sissel; Helen H. Harder (Editorial Assistant). Address editorial correspondence to Clifford Earle, Secretary and Editor.

Counseling Committee on Church and Society: Malcolm S. Alexander, LeRoy Anderson, Mrs. Werner J. Blanchard, Mrs. Fred. J. Church, Joseph J. Copeland (Chairman), Mrs. Albert L. Elder, David F. Freeman, Robert H. French, Theodore Gill, Edler G. Hawkins, George W. Johns, William Kirkland, Mrs. Horace C. Lukens, Kenneth McGilvray, Mrs. W. J. H. McKnight, Clinton M. Marsh, John O. Mellin, Hans Noll, Miss Mary Jane Patterson, John G. Ramsay, Mrs. Ben Russell, Paul David Sholin, Stephen Stephan, Wolfgang Stolper, Shelton B. Waters.

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BY WAY OF INTRODUCTION

THIS issue of SOCIAL PROGRESS is a unique experiment in dealing with a controversial question.

It consists almost in its entirety of two court briefs and the legal opinion of a Federal court. Except to those who are in the habit of reading journals of jurisprudence and "law reporter" publications, it should provide a new adventure for the mind.

The case in point is one that promises to become a landmark in church-state litigation, although it probably will never achieve the fame of the Tennessee Scopes trial, which produced a Broadway hit play and a Hollywood movie *Inherit the Wind*. When it is finally decided, probably by the United States Supreme Court, *The Schempp Case* will determine whether or not the fairly common practice of Bible-reading in the public schools can legally continue.

In bare-bones outline, the current status of *The Schempp Case* can be summarized as follows:

A Pennsylvania statute, as amended in 1949, required that "At least ten verses from the Holy Bible . . . be read, or caused to be read, without comment, at the opening . . . of each school day, by the teacher in charge." In Abington Township public schools (as in some others) the practice was to follow the Bible-reading with the mass recitation of the Lord's Prayer, the salute to the flag, and announcements for that day.

In February, 1958, Mr. and Mrs. Edward Schempp, of Abington Township, and their three minor children filed a complaint alleging that the practice of Bible-reading and prayer violated their religious

consciences and liberties. They challenged the constitutionality of the Pennsylvania statute and sought an injunction against the continuation of the "religious" aspects of the school's "opening exercises." The Schempps received legal assistance from the American Civil Liberties Union. The case was tried before a special three-judge Federal court.

In September, 1959, that Court declared the Pennsylvania statute unconstitutional on the grounds that it provided for an establishment of religion and interfered with the free exercise of religion. However, the Court permitted the practice of Bible-reading and prayer to continue while the defendants (the School Board) appealed the decision.

In November, 1959, the defendants appealed to the United States Supreme Court.

In December, 1959, the statute at issue was amended by the State Legislature in such a way as to provide that any child might, by written request of his parent or guardian, be excused from attending the daily Bible-reading.

In November, 1960, the United States Supreme Court "vacated" the finding of the special court in the light of the changed statutory situation, which had removed the explicit "compulsory" feature of the 1949 law. The Bible-reading and prayer continue. The litigation will undoubtedly continue, though through what legal channels remains to be seen.

Substantial portions of the arguments from the briefs for the plaintiffs and the defendants begin on pages 6 and 7 respectively. The essential portion of the Court's opinion and its "final decree" begin on page 41.

Those who have assumed that legal language is of necessity dull and barren are probably in for a surprise. In these briefs the apprehensions and aspirations of real people who have something "at stake" on both sides of the litigation are woven into a legal, philosophical, and theological fabric of dramatic vividness.

At the same time, the contrast between the measured and reasoned arguments set forth by the attorneys and the passions aroused in segments of "the public" when *The Schempp Case* first was publicized needs to be indicated—as it is not in the court record.

Most of the editorial comment and letters to the editor that appeared in local newspapers following the filing of the suit were critical of the Schempps. The editorials, with a few exceptions in some of the weekly suburban papers, were moderate in tone. The letters in the "voice of the people" sections of the newspapers tended to be less restrained. Mail that came directly to the Schempps and the School Board tended toward virulence, although of course the voice of reason was not entirely missing. Some of the adjectives used in this mail drew heavily upon the four-and-five-letter Anglo-Saxon vocabulary of the correspondents. A few of these letters were signed "in the name of our Lord and Savior Jesus Christ." It is interesting also to note that while the Schempps are "practicing" Unitarians, much of the mail they received assumed that they were Jews or atheists or Roman Catholics.

Although the briefs speak for themselves and ably present the arguments on both sides of the Bible-reading question, Christians may wish to remind themselves with gratitude before God of the noble but delicate structure of

"due process of law" which stands between the orderly resolution of social conflict and the swirling tides of chaos, unleashed by human passions. Many a local community has been torn asunder by conflicts in public policy on issues of church-state relations.

●

In full awareness of the potential danger to our common life of inter-faith disagreement on these issues, the General Assembly last year directed

the Moderator to appoint a special committee, working in co-operation with the Department of Social Education and Action and in consultation with other groups, to interpret the meaning of the doctrine of separation of church and state in the light of the Reformed tradition, so as to clarify the rights and responsibilities of religious groups in our pluralistic society, to apply its findings to the most salient issues of church-state relations, and to report the results to a future General Assembly.

That committee is chaired by Dr. Elwyn Smith, of Pittsburgh Theological Seminary, and is ably staffed with clergymen and lawyers who expect to spend at least two years in studying the complexities of a religiously pluralistic society before bringing their recommendations to a future General Assembly. Eleven other questions, in addition to the one of religion in the public schools, will claim their attention.

It is hoped that this issue of SOCIAL PROGRESS will add some further light to a question that too often generates only heat.

—The Staff

P. S. *The editors were particularly impressed by the cogency and power of certain sentences and paragraphs in both briefs and were tempted to underline them. However, they resisted that temptation as a possible violation of the integrity of the briefs themselves. They do suggest then that the reader, if he has not already acquired the habit, read with pen in hand and do his own underlining.*

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Edward L. Schempp et al
v.
School District of Abington Township et al

Civil Action No. 24119

Brief for the Plaintiffs

Jurisdictional Statement . . .

Statement of Facts

The plaintiffs Edward Lewis Schempp and Sidney Gerber Schempp are of the Unitarian faith and are members of the Unitarian Church in Germantown, Philadelphia, Pennsylvania, which they regularly attend together with their three children, Ellory [18], Roger [15], and Donna [12]. . . .

The three Schempp children and their father testified as to the points of religious doctrine purveyed by the King James Version of the Bible which were contrary to the religious belief which they held and which the father and mother were teaching to their children. The plaintiffs' first witness on this point was the older son, Ellory Schempp. . . .

At the outset of Ellory's senior school year in September, 1957, he approached his home room teacher [with a request to be excused from the opening exercises] and was sent by her to the assistant principal, who [directed] that Ellory was to conform to the school rule in order to show respect; that matters of conscience and religion were not as important as conforming to the school rule. Thereafter, Ellory sat in class, but he read or did homework during the reading of the Bible for the next few days until [the assistant principal] directed him that he must pay attention and show complete respect by not doing any other work, and he complied with this direction.

Ellory Schempp testified that he was a member of the Unitarian Church and had been since childhood, that he did not believe in the divinity of Christ, the Immaculate Conception, in an anthropomorphic God, or in the concept of the Trinity. And he stated that all of these sectarian doctrines were asserted in the portions of the Bible read to him during his attendance at the schools of Abington Township.

(*Continued on page 8*)

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Edward Lewis Schempp et al
v.
School District of Abington Township et al

Civil Action No. 24119

Brief for the Defendants

Jurisdiction . . .

Statement of Questions Involved

a. Does a Statute of the Commonwealth of Pennsylvania requiring the reading without comment of ten verses of the Holy Bible at opening exercises of all public schools in Pennsylvania violate the First and Fourteenth Amendments to the Constitution of the United States?

b. Does the existing custom in the School District of Abington Township of saying the Lord's Prayer at the opening exercises of each school day violate the First and Fourteenth Amendments to the Constitution of the United States?

Statement of the Case

This action by Edward and Sidney Schempp, individually and as parents and natural guardians of Ellory, a former pupil, and Roger and Donna Schempp, present pupils of the School District of Abington Township, seeks to enjoin the operation of and have declared unconstitutional both the Act of the Commonwealth of Pennsylvania which requires the reading without comment in the public schools each day of ten verses of the Holy Bible and the expenditure of funds by the Abington School District for the purchase of Holy Bibles. In addition, plaintiffs pray that the custom in the Abington Township schools of saying the Lord's Prayer each morning be enjoined and declared unconstitutional. . . .

As part of the daily opening exercises at the Abington Senior High School and the Huntingdon Junior High School ten verses of the Holy Bible are read without comment to the students. Such practice, long a custom in the public schools, was first made a statutory requirement in all the public schools of Pennsylvania by Act of May 20, 1913, P. L.

(*Continued on page 23*)

(Continued from page 6)

The father, Edward L. Schempp, pointed out that the manner of presentation, ten verses without comment, was that of a religious ceremony, the material being given a degree of authority and religious significance above normal school authority. In content, the father objected to material in the Old Testament regarding blood sacrifices, uncleanness, and leprosy, together with the whole concept of the Old Testament God, which was contrary to the concept of deity which he endeavored to instill in his children. He testified that he did not want his children to acquire an image of Jehovah, the God of vengeance. He pointed out that in the very midst of the Ten Commandments was a verse asserting that God would visit the sins of the father upon the fourth generation—a particular verse he testified had been read in the Abington High School—and the witness went on to assert that this concept of God was in sharp contrast with the God of his own church and as taught in the Schempp family.

Mr. Schempp also testified that there were innumerable bits of anecdotal material which were quite foreign to his concept of what is good, religious and moral, such as the injunction that one should not eat meat that dies of itself but that it may be fed to "the stranger within thy gates." (Dr. Solomon Grayzel, who subsequently testified for the plaintiffs as an expert, pointed this out as an example of the unfortunate errors attendant upon ceremonial reading of the Bible without explanation, and stated that this passage meant only that it might be fed to those not governed by religious dietary laws.)

Roger Schempp, the younger son, testified that he also attended a Unitarian Sunday school and sometimes church services with his family and that he believed that Christ was a great man but did not believe other things that the King James Version of the Bible asserted concerning Christ and the events of his life and did not believe in the divinity of Christ.

Donna Schempp, a student in the seventh grade in Huntingdon Junior High School, likewise testified that she attended the Unitarian Sunday school and cited several points of religious belief contrary to that asserted by what she had heard read to her from the King James Version of the Bible in school. She also recounted the reaction of a Jewish friend and fellow student who objected to a reading of the portion of the New Testament. Donna said that she had never made any complaint about the reading of the Bible.

There is evidence in the record that the combined ceremony of Bible-reading and the saying of the prayer was, on frequent occasions, although not uniformly, referred to by both students and teachers as the "morning devotions."

Roger Schempp referred to the ceremony as "morning exercises"; counsel for the School District referred to the ceremony as "devotional services" or "devotional exercises."

On behalf of the plaintiffs, Dr. Solomon Grayzel, [a rabbi and] editor of the Jewish Publication Society, . . . testified that there were marked differences between the Jewish Holy Scriptures and the Christian Holy Bible, the most obvious of which was the absence of the New Testament in the Jewish Holy Scriptures.

Dr. Grayzel testified that from the standpoint of the Jewish faith, the entire New Testament and the concept of Jesus Christ as the Son of God was "practically blasphemous." He cited at random incidents in the New Testament which were not only sectarian in nature but which tended to ridicule or scorn the Jews or, more particularly, the Jewish religious hierarchy, such as the address of Jesus in Matthew 23, in which the scribes and Pharisees are described as hypocrites.

The witness also cited the famous scene portrayed in Matthew 27, in which the trial of Jesus before Pilate is described and in which, as related by the Christian New Testament, the Jews are portrayed as refusing to exchange Barabbas for the release of Jesus but insisting upon crucifixion in spite of the attempts of Pilate to placate the mob, the washing of the hands by Pilate, and then the verse 25, "Then answered all the people, and said, 'His blood be on us, and on our children,'" concerning which the witness stated that that single verse had been the cause of more anti-Jewish riots throughout the ages than anything else in history.

On the basis of his experience as a teacher of Jewish children in religious subjects, both in New York and in Gratz College, Philadelphia, Dr. Grayzel gave the opinion that such material from the New Testament, particularly that having to do with the trial and the crucifixion of Jesus, was capable of being explained to Jewish children in such a way as to do no harm but if merely read without explanation, it would be, and in his specific experience with children had been, psychologically harmful to the child and a divisive force within the social media of the school.

In response to a question from the court, Dr. Grayzel said that with regard to the recitation of the Lord's Prayer, the text of the prayer was unobjectionable, being derived from rabbinic material but calling the prayer of the man, Jesus, "the Lord's Prayer" transgressed the concept that there be any Lord other than God himself. . . .

Dr. Grayzel also acknowledged that there were excerpts from the New Testament which were not objectionable but when counsel for the School District suggested the story of the Good Samaritan, as an example, the witness emphatically stated that the story was deliberately tampered with when inserted in the New Testament and that the Samaritan had been substituted for an Israelite as "a slap at the Jews of that day who refused to join the Christian church," since it was obvious that the characters of

the original story would have been representatives of the divisions of the Jewish society of the time, namely, Priests, Levites, and Israelites, and so told it would have had a certain moral teaching upon which Dr. Grayzel elucidated. As presented in the New Testament, Dr. Grayzel pointed out that the Christian child could well reproach the Jewish child with the cruelty of the people from whom the Jewish child was descended; that, therefore, such a story should not be read in public schools.

In respect of the Old Testament, Dr. Grayzel testified that there was a general similarity between the Old Testament of the King James Version and the Jewish Holy Scriptures, although they were of a different order of books and the Jewish religion ascribed substantially different levels of holiness and authority to different portions. . . .

In addition, there were specific instances in which the King James Old Testament had, in the view of the Jewish religion, been imbued with a Christological significance.

Dr. Grayzel also explained that there was a significant difference in attitude with regard to the respective holy books of the Jewish and Christian religions in that Judaism attaches no special virtue to the reading of the Bible per se, that the Jewish Holy Scriptures are source materials to be studied, and the witness gave examples of confusion which had arisen in children's minds where passages of the Bible were read without benefit of explanation or comment. . . .

For the defense, the Superintendent of Schools of Abington Township testified that a King James Version of the Bible was purchased by the School District and one copy issued to every teacher in the district. No other versions of the Bible or other religious work or text were ever purchased.

All of the witnesses connected with the School District agreed that the method of selection of the verses for daily reading varied. In all of the schools, including Abington Senior High School, prior to the availability of the public-address system, discretion as to selection and method of selection was left to the individual teacher, some of whom delegated this function to the students.

According to the testimony of an English teacher at Abington Senior High School in charge of something known as the "radio and television workshop," a particular practice was followed in that school, after its move to its new building, under which the approximately 30 students of the radio and television workshop did the actual reading of the Bible and the leading of the school in the saying of the Lord's Prayer. [The teacher] testified that the students who exhibited the best "microphone technique" were made announcers, since this was the most difficult, and that others were assigned the task of reading the Bible verses and still others the pledge of allegiance to the flag. . . .

The defense likewise presented an expert witness, Dr. Luther A. Weigle, an ordained Lutheran minister, then holding a Congregational ministry in his capacity as Dean Emeritus of the Yale Divinity School.

Dr. Weigle testified at some length as to his experience and background in matters concerning theology, all of which was within the discipline of the Protestant sects. On the basis of this experience he testified that, although one of the outstanding issues of the Protestant Reformation was the feeling of Luther, Calvin, and others that there must be a return to the original Hebrew text for a new translation of the Bible, the King James Version was not a sectarian work. It developed, however, under questioning by the Court that in Dr. Weigle's opinion, it would be a sectarian practice if the Hebrew Scriptures, in English, were read to the exclusion of other works; and it was the witness' opinion that this would probably not satisfy the requirement that "The Holy Bible" be read. Subsequently on cross-examination the witness defined his statement that the Bible was "nonsectarian" as meaning nonsectarian among the various Christian bodies with a caveat as to the Catholic Church. . . .

On direct examination Dr. Weigle had testified at considerable length on the new Revised Standard Version of the Protestant Bible and his part in the work of translating and editing this book. He acknowledged that as late as 1952, shortly after its publication, there were organizations within the Protestant Church who bitterly opposed the new Revised Standard Version and that there were public burnings of books of this version.

Dr. Weigle stated that he thought there was educational value in reading the King James Version, both because of the moral teachings contained therein and the high literary value, but he acknowledged on cross-examination that such aspects were incidental when he endorsed the following statement from the book of which he was the author:

The message of the Bible is the central thing, its style is but an instrument for conveying the message. The Bible is not a mere historical document to be preserved. And it is more than a classic of English literature to be cherished and admired. The Bible contains the word of God to man. And men need the Word of God in our time and hereafter as never before.

And he further stated that the reason that the Bible had moral, literary, and historical values was "because people have believed it, because they believe that there is something revelatory in it of what true morals are. It is not simply a literary exercise, but its literature has arisen out of that faith."

Argument

The statute requires Bible-reading in the public schools as a religious ceremony and thereby violates plaintiffs' rights guaranteed by the First and Fourteenth Amendment to the United States Constitution.

Plaintiffs submit that the mandatory requirement of the statute that ten verses of the Holy Bible be read without comment and the practices followed in obeying it as the record here reveals, admit of only one interpretation, that is the intention of the Legislature to introduce a religious ceremony into the public schools. This being so plaintiffs submit their constitutional rights have been infringed in that the act violates both the "establishment of religion" and the "free exercise" clauses of the First Amendment as applied in this instance by the Fourteenth Amendment.

I. *The practice required by the statute constitutes a religious observance or ceremony.*

It is clear that the statute here involved provides for a reading of the Bible as a devotional or religious act; it expressly bars comment and, in providing for dismissal of teachers who fail to comply, it implicitly recognizes the likelihood of religious or conscientious objections by teachers to participation in such exercises. . . .

The statute requires the reading specifically of the "Holy" Bible, and enjoins any comment upon what is read. No other book or writing, of whatever historical or literary merit, has been so singled out and made a compulsory subject of reading by teachers (upon pain of dismissal) in the schools.

Moreover, the reading is not confined to passages of recognized literary grace, nor is any effort required or made to select passages of particular historical or moral value, even assuming agreement could be reached on the identity of such passages. The fact that the reading must be without comment necessarily means that the pedagogical benefits, if there can be any when comment and discussion are forbidden, are relegated to an inconsequential role in comparison with the religious significance of the reading.

The record establishes that the form and atmosphere of the daily reading is not that of instruction or teaching of educational material. Rather, the proceedings are formal and ceremonial, with the children instructed to be especially attentive and respectful. The reading is part of what are commonly called "morning devotions," and even counsel for the School District referred to it as "devotional exercises." . . .

The fact cannot be escaped that the Bible is essentially a religious work, and that its reading under these ritualistic circumstances is undeniably a religious exercise.

Plaintiffs do not and need not contend that any version of the Bible or of any other major religious work is incapable of being used as pedagogical source material or is disqualified from any possible use in schools. The contention is that it is not so used in the schools of Abington Township and was not intended by the Legislature to be so used. This is plainly demonstrated by the fact that the Lord's Prayer, which clearly has no significance other than the religious one, is recited immediately after the Bible-reading. Not only is the practice of mass compulsory recitation of the prayer unconstitutional in itself, but the juxtaposition of this incantation following the Bible-reading removes all doubts, if any there be, as to the religious character of the Bible-reading.

The Legislature has required, under criminal penalty, that all children in the Commonwealth attend school. It has provided that there must be each day a religious observance by teachers who face dismissal for failure to do so. The law under attack, therefore, is one which establishes a compulsory religious ceremony enforced by criminal sanction.

II. *The practice required by the statute constitutes an establishment of religion in violation of the establishment clause of the First Amendment.*

The guaranty provision of the First Amendment ("Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.") has a double aspect as applied to any law on the subject of religion; it bars compulsory acceptance of any creed or the practice of any form of worship and it safeguards to the individual the free exercise of any chosen form of religion. In the interest of clarity, we shall discuss separately the impact of the establishment and free exercise clauses upon this statute and the practices followed in observing it.

The establishment clause of the First Amendment forbids not merely an established *church;* it forbids any law "respecting an establishment of *religion.*" Whether its meaning and scope be fathomed by analysis of the literal words used, the stirring historical background of its adoption or review of the judicial precedents interpreting it, one must conclude that it forbids any interference, either positive or negative, by the state in things religious. The state may neither hinder nor aid religion—either any religion or all religions. For what the state may aid, it may hinder; what it may foster, however slightly or indirectly, it may impede grossly and directly. In short, the Amendment has been accepted as creating a wall of separation between church and state. . . .

Although the precise issue here raised has not been passed upon by the Supreme Court, its determination we submit requires no extension of the "wall of separation" nor any drawing of new constitutional lines. The Supreme Court has rendered two important decisions concerning the related

question of "released time" programs, *McCollum v. Board of Education* and *Zorach v. Clauson.* A fair reading of these cases requires the conclusion that Bible-reading in the public schools violates the United States Constitution.

In the *McCollum* case, a parent and taxpayer objected to a released-time program in which religious instruction was given to public-school children during school hours and on school premises. . . . The Court held the program unconstitutional as a violation of the principle of separation of church and state, repeating the classic summation of the "establishment" clause which it had laid down in *Everson v. Board of Education:*

The "establishment of religion" clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or nonattendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect "a wall of separation between church and state."

In the *Zorach* case, a different type of released-time program was upheld by the Court (three Justices dissenting). There, the religious instruction was not given on public-school premises, and it was presented by private teachers selected by the parents or churches of the children concerned; parents desiring to participate in the program merely notified the school authorities, and their children were released at designated times. The Court based its ruling on the differences between that program and the program in the *McCollum* case:

In the *McCollum* case the classrooms were used for religious instruction, and the force of the public school was used to promote that instruction. Here, as we have said, the public schools do no more than accommodate their schedules to a program of outside religious instruction. We follow the *McCollum* case.

Using the standards set out in the *Zorach* case, it is clear that Bible-reading in the classes of the public school violates the Fourteenth Amendment. As in the *McCollum* case: (1) the classrooms are used for religious instruction and (2) the force of the public school is used to promote that instruction. In addition, the public-school teachers, i.e., the State's representatives, are directly conducting or supervising that instruction—a circumstance which goes beyond even the *McCollum* case. Here, in contrast to the "released time" programs, the problems raised are not those of mere ancillary aid to religious groups. Not only are the school buildings used, but the religious instruction is given by the school officials out of Bibles supplied by the School District from public funds. The question is thus not

merely one of assistance provided to recognized groups coming in from outside, but rather one of official state support given to the ideas which such groups espouse.

A. *The statute aids and prefers one religion to all others.*

Christianity is the religion favored by this act to the exclusion of all other religions. More than this, a particular sect of Christians is preferred over other sects, for while the statute does not specify which version of the Bible shall be read, manifestly any book which can qualify as a "Holy Bible" is by definition a religious book of a particular Christian faith, creed, or sect. And as the record in this case eloquently shows, invariably the version of the Bible used will be the one favored by the dominant sect in the community, or at least that favored by the predominant sect among the personnel of the school administration.

In *Tudor v. Board of Education,* the Supreme Court of New Jersey condemned as violative of the Fourteenth Amendment a school board resolution permitting the distribution of Gideon Bibles of the King James Version. Chief Justice Vanderbilt stated:

To permit the distribution of the King James Version of the Bible in the public schools of this State would be to cast aside all the progress made in the United States and throughout New Jersey in the field of religious toleration and freedom.

The practice struck down in the *Tudor* case was far less objectionable. There was no reading of the Bible in the school, the distribution was carried out privately, upon individual request of parents, and without cost to the school system. Although care was taken to ensure that the children were under no pressure to apply for a Bible, yet the court concluded there was coercion in fact. Obviously the instant case presents a far more serious intrusion upon the public-school system, for despite the wishes of their parents the minor plaintiffs were compelled to attend and to be attentive.

The defendants seek to meet the position that the statute herein is preferential by adopting the argument employed by most of the state courts which have upheld such statutes, that the Bible is "nonsectarian." But the Supreme Court has never held or even intimated that the First Admendment proscribes only the establishment of "sectarian" religion. While a number of state courts have considered in varying forms the constitutionality of Bible-reading in public schools, the issue considered in those cases was usually confined to whether the use of the Bible was "sectarian" within the meaning of a provision in the State Constitution prohibiting sectarian teaching or giving preference to any religious sect. . . .

In the light, however, of the *Everson* and *McCollum* decisions, it is clear there is no constitutional basis whatsoever for distinguishing between "sectarianism" and "religion" except in so far as "sectarian" may be

a convenient shorthand term for describing laws which in the language of the Supreme Court "aid one religion" or "prefer one religion over another."

The particular Holy Bible read in the schools of Abington Township and throughout the Commonwealth of Pennsylvania and the only Bible purchased by the Commonwealth and supplied to all teachers is the King James Version, which is the official Bible of certain of the Protestant sects of the Christian religion. It is a sectarian religious work, both in purpose and content. Its dedication is anti-Catholic; it has been called by the Catholic Church the "chief arm of the Protestant revolt." The New Testament, known to Protestants as the Gospel, was written as, and for 1900 years has been, the principal vehicle for the promulgation of the Christian religion and it is, therefore, as sectarian vis-à-vis Judaism as it is possible for a religious work to be. . . .

Naturally no more fertile field for proselytism could be found than the public schools. Whether, in fact, the Protestant Bible was selected for such purposes is immaterial if, in fact, the Catholics so believe. It was just such occasions for divisive recrimination that the First Amendment was designed to avoid. The very practice of reading a Bible "without comment" has been vigorously condemned by Catholic authority which has decreed, "Believing herself to be the divinely appointed custodian and interpreter of Holy Writ, she cannot without turning traitor to herself approve the distribution of Scripture 'without note or comment.'" The same authority has asserted that the "impelling motive" of those who distribute such Bibles is their knowledge that "Private interpretation of the Scriptures" is a "fundamental fallacy." . . .

The concept of an anthropomorphic God, the concept of a God of vengeance, the doctrine of the Trinity, the doctrines of the virgin birth, the divinity of Christ, the transfiguration, the miracles—all these *religious* beliefs are contrary to the religious beliefs of the plaintiffs, both parents and children. In a religiously free society, the Schempp parents should not be put to contradicting in the home what their children are subjected to in the school. . . .

The Schempps ask no more than that which one would suppose they were entitled to as citizens of the United States: the right to form and mold and guide the spiritual life of their own children themselves without interference or "help" from the Commonwealth, however well-intentioned.

To brush aside these differences in belief as mere quibbles is, to say the least, an extraordinary rewriting of the records of centuries of religious conflict and bloodshed. To treat them this lightly is to degrade the precious values of religion and specific religious belief. The result is to foster a kind of national creed, a religiosity without religion, a sanctimonious eclecticism cut adrift from theology.

The characterization of the Holy Book of any religion as "nonsectarian" is, of course, almost inevitable on the part of the hierarchy of the par

ticular church or religion. All religions claim universality; all believe, and must believe, that their truth is truth and that the truth of other religions is, at best, error. Likewise, the writings or sacred texts upon which the religion founds its particular beliefs, if admitted by the adherents of the religion to be "sectarian" are thus conceded to be less than fundamental and universal origin and application, or at least, suggests that the faith in question is but one of many competing and coequal religions. The sacred text of others is likely to be considered sectarian, one's own being, in each word, the word of God can hardly so be deemed. The ultimate affront to those whose sacred work is other than the King James Version is the assertion that the version is "nonsectarian.". . .

No better summation of the case against the claimed nonsectarianism of the Bible can be stated than the one contained in *People ex religion Ring v. Board of Education.* In that case Catholic parents complained that their children were compelled to attend public school where the King James Version of the Bible was read. The court in holding the practice invalid as sectarian instruction within the meaning of the Illinois Constitution said:

Christianity is a religion. The Catholic Church and the various Protestant churches are sects of that religion. These two versions of the Scriptures are the bases of the religion of the respective sects. Protestants will not accept the Douay Bible as representing the inspired word of God. . . . Conversely, Catholics will not accept King James's version . . . . The differences may seem to many so slight as to be immaterial, yet Protestants are not found to be more willing to have the Douay Bible read as a regular exercise in the schools to which they are required to send their children, than are Catholics to have the King James Version read in schools which their children must attend.

The reading of the Bible in school is instruction. Religious instruction is the object of such reading, but whether it is so or not, religious instruction is accomplished by it. The Bible has its place in the school, if it is read there at all, as the living word of God, entitled to honor and reverence. Its words are entitled to be received as authoritative and final. The reading or hearing of such words cannot fail to impress deeply the pupils' minds. It is intended and ought to so impress them. They cannot hear the Scriptures read without being instructed as to the divinity of Jesus Christ, the Trinity, the resurrection, baptism, predestination, a future state of punishments and rewards, the authority of the priesthood, the obligation and effect of the sacraments, and many other doctrines about which the various sects do not agree. Granting that instruction on these subjects is desirable, yet the sects do no agree on what instruction shall be given. Any instruction on any one of the subjects is necessarily sectarian, because, while it may be consistent with the doctrine of one or many of the sects, it will be inconsistent with the doctrines of one or more of them.

. . . If Catholic children may be compelled to read the King James Version of the Bible in schools taught by Protestant teachers, the same law will authorize Catholic teachers to compel Protestant children to read the Catholic version. The same law which subjects Catholic children to Protestant nomination in school districts which are controlled by Protestant influences will subject the children of Protestants to Catholic control where the Catholics predominate. In one part of the state the King James Version of the Bible may be read in the public schools, in another the Douay Bible, while in school districts were the sects are somewhat evenly divided, a religious contest may be expected at each

election of a school director to determine which sect shall prevail in the school. Our Constitution has wisely provided against any such contest by excluding sectarian instruction altogether from the school. . . .

If this statute can be upheld, it would be as justifiable and consistent, for example, for the Mormons (Latter-day Saints), in areas where they predominate, to insist that the Book of Mormon, which they regard as inspired by God, be read in public schools; or for Christian Scientists to insist that Mary Baker Eddy's *Science and Health with Key to the Scriptures,* which they regard as inspired, to be read; or for Swedenborgians (New Church) to insist upon the reading of writings of Emanuel Swedenborg, such as *Arcana Celestia* or *Heaven and Hell,* which they regard as inspired; or for Spiritualists to insist upon the reading of some of the messages which they regard as inspired; or for followers of Eastern religions, of which there are many in this country, to insist upon the reading of the holy books of the East such as the Confucian classics, the Buddha Scriptures and the Koran. . . .

B. *The act aids all religions.*

We have stated at considerable length our reasons for contending this statute bad as giving a clear preference to one religion, but we do not mean to suggest that its ailment would be remedied in the least degree if the words "Holy Bible" were interpreted to include only the books thereof acceptable to the Jews or if the various versions currently used by Protestants and Catholics were in some fashion made available for use in public schools without discrimination, nor indeed would it vary the case one bit if this statute were widened to include the "holy" books of every religious group that claims adherents in the United States today, for the Supreme Court has made clear beyond quibble that the state may not "aid all religions" any more than it may prefer one over another. . . .

The First Amendment is thus not an "equal protection" clause among religions; it was framed to meet the demands of the states for an express and absolute prohibition against government power to deal with religion in any form or manner. . . .

Perhaps none of the provisions of the Bill of Rights are so illuminated by study of the immediate history behind their adoption as the clause which is involved in this case. In the first place, the precise identity of its author and principal sponsor is known to be James Madison, and Madison was the protagonist of the most important and the most revealing struggle involving civil liberties to have taken place in the several states prior to the adoption of the Bill of Rights. We refer to the fight against the Assessment Bill in the legislature of Virginia during 1784 and 1785. This bill was designed to support religion in general; each taxpayer having the privilege of selecting the church which should receive his share of the tax *or,* if he preferred, his share could be designated by him for education. Thus there was neither overt preference for one sect over another nor enforced contribution to some church since the tax could be used for secular purposes.

However, Madison and Jefferson fought the Assessment Bill, were ultimately successful and, in the succeeding legislature, there was passed Jefferson's Bill for Establishing Religious Freedom. As part of the fight against the Assessment Bill, Madison published one of the great landmarks in the history of human freedom—the famous *Memorial and Remonstrance*. . . .

In view of Madison's subsequent draftmanship of the religious clause of the First Amendment, the *Remonstrance* is more than a historical curiosity; it declares the very basis of policy upon which, a few years later, the First Amendment clause was founded.

Madison's position was that religion is wholly exempt from the cognizance of civil society and hence beyond the power of the legislature to treat in any way—by aid or hindrance, large or small. The fact that the Bill was nondiscriminatory and nonsectarian, and even the fact that in default of a designated religion the tax was destined for secular education did not eliminate the fact that the state intended to "employ Religion as an engine of civil policy." The preamble of the Assessment Bill made the same plea as is made in this case by the defendants through the testimony of Dr. Weigle. The Preamble stated that the general diffusion of Christianity "hath a natural tendency to correct the morals of men, restrain their vices, and preserve the peace of society. . . ." Dr. Weigle's conclusion as to the fitness of promulgation of the Christian Bible was similar. The assertion may be perfectly true; Madison did not deny it. He did challenge the principle of state use of religion to further civil policy (and, of course, the use by religion of the state to further religious policy). The issue is the same as exists in the instant case except that the statute here under attack is far more sectarian and coercive than the Assessment Bill.

Madison also pointed out that although the Assessment Bill embraced all Christian religions for its aid, and provided a secular alternative, that:

Who does not see that the same authority which can establish Christianity, in exclusion of all other Religions, may establish with the same ease any particular sect of Christians, in exclusion of all other sects?

III. *The statute interferes with the free exercise of religion.*

We submit it requires no extended argument to demonstrate that this statute violates the "free exercise" provision of the First Amendment as well as the "establishment" clause. It does so by compelling a religious exercise which violates the religious conscience and liberty of these plaintiffs.

It is important to note that the statute makes no provision for consent by public-school children or their parents to participation in Bible-reading or Lord's Prayer recitation. On its face, the statute, we submit, compels participation in religious exercises and is therefore violative of the First Amendment.

In many cases involving religious observance in public schools, the coercive factor has been, quite properly, *presumed* by the courts. In this case coercion, indeed, absolute complusion, is a fact of record, undenied by the School District. The uncontroverted testimony is that Ellory Schempp does not believe in many doctrines purveyed by the King James Version of the Bible and that, having made known these sentiments to the school authorities, and having attempted such peaceful protest as was consistent with good order and discipline, he was specifically directed and compelled by the Assistant Principal to submit to, respectfully attend to and participate in, a religious ceremony with the admonition that his own conscience and religious views should be subordinated to school rules. What is true as to Ellory equally applies to the two younger children, both of whom testified they were compelled to attend the Bible-reading ceremony. The fact they made no protest is significant as illustrative of the tendency of children to conform. . . .

However, even if in practice children were permitted to be excused upon request, the element of compulsion would not thereby be eliminated. This was recognized by the Justices joining in the concurring opinion of Mr. Justice Frankfurter in the *McCollum* case:

. . . That a child is offered an alternative may reduce the constraint; it does not eliminate the operation of influence by the school in matters sacred to conscience and outside the school's domain. The law of imitation operates, and nonconformity is not an outstanding characteristic of children. The result is an obvious pressure upon children to attend . . .

This observation is even more pertinent in the present case, where affirmative action by the child would be required if he wishes to dissociate himself from the group (assuming that, in other schools, permission might be granted), than in the *McCollum* case, where affirmative action was required for association. . . .

The mandatory language of this statute admist of no exceptions; its purpose is clear to obtain a conformity in the matter of religious practice. This is an apt description, and the apt answer has been made in the words of Mr. Justice Jackson speaking for the Supreme Court in the *Barnette* case:

As governmental pressure toward unity becomes greater, so strife becomes more bitter as to whose unity it shall be. Probably no deeper division of our people could proceed from any provocation than from finding it necessary to choose what doctrine and whose program public educational officials shall compel youth to unite in embracing. Ultimate futility of such attempts to compel coherence is the lesson of every such effort from the Roman drive to stamp out Christianity as a disturber of its pagan unity, the Inquisition, as a means to religious and dynastic unity, the Siberian exiles as a means to Russian unity down to the fast failing efforts of our present totalitarian enemies. Those who begin coercive elimination of dissent soon find themselves exterminating dissenters. Compulsory unification of opinion achieves only the unanimity of the graveyard.

It seems trite but necessary to say that the First Amendment to our Constitution was designed to avoid these ends by avoiding these beginnings.

Conclusion

It will doubtless be argued that the impingement of this statute upon the right of these plaintiffs is at most an inconsequential one to be suffered or endured in the interest of moral training or discipline of the young; this is the argument of the Preamble to the Assessment Bill. Madison's twofold rejoinder is likewise applicable, first that this is using religion as an engine of civil policy and, further, as he said, "Who does not see that the same authority which can establish Christianity, in exclusion of all other Religions, may establish with the same ease any particular sect of Christians, in exclusion of all other Sects? That the same authority which can force a citizen to contribute threepence only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever?" . . .

To support the argument that the so-called moral and disciplinary values inherent in the practice compelled by the statute outweigh the infrequently voiced objections of parents and pupils whose conscience is violated, defendants offered only opinion testimony as to the value of Bible-reading unsubstantiated by any factual study of its effect as compared with the effect of its omission from the daily school curriculum on children in those states where the practice has been held unconstitutional. We therefore submit the argument that moral uplift abides in compulsion to conform to the practice is one of obvious dubiety anyway. Certainly the moral uplift to be derived from it is neither so demonstrable nor so related to the proper training of the young and their indoctrination with civic virtue that the practice is beyond the sweep of the First Amendment prohibition.

Let it not be understood for a moment that we deprecate the great role of religion in our country today. But religion is great to the extent that it is not compelled. The history of Christianity throughout the ages has not been one to inspire confidence in attempts of the state to proscribe differences in religious opinions or to compel adherence to any practice. And if the essence of the Christian religion is love, forbearance and charity, it will best prosper and gain adherents in a society where it has no special privileges and by the same token no special obligations, where it is free from restraints and where the same freedom exists for the individual to accept it or to reject it for another form of worship, or for no form of worship at all.

The American solution of a religiously pluralistic society is unique. It is not the solution of secularism: observers of the American scene from de Tocqueville to the most recent Gallup poll remark upon the high proportion of church membership and attendance. This solution has avoided the anticlericalism and aggressive secularism which has generally characterized Western European societies. The tradition is not merely the Judaeo-Christian tradition insulated and diluted with the secular humanism of the rationalist enlightenment of the eighteenth century. Nor is it quite this

rationalism with its secular humanism infused with religion. For inherent in it is the concept of the state of limited authority and concerns, a state which is a means, not an end, and which does not assert itself as being the *Whole*.

The wall of separation implies not antagonism, or even indifference, to religion—on the contrary it is the apotheosis of deference by Caesar to God. It places such matters utterly beyond the ambit of civil power. It is a commonplace, and may be observed on every hand that the individuals who make up this unique society are religious, conspicuously including those upon whom that society has conferred the highest offices; but while the individuals may be religious, the state is not.

Each color of the spectrum when combined makes colorless light. The pluralistic society is of infinite range of color, each with its own tint and shade; the prism of the state which combines them all is utterly transparent.

Respectfully submitted,
WAYLAND H. ELSBREE
HENRY W. SAWYER, III
Attorneys for Plaintiffs

(Continued from page 7)

226. The preamble to this Act stated in part that "it is in the interest of good moral training, of a life of honorable thought and of good citizenship, that the public-school children should have lessons of morality brought to their attention during their school days," and in his report concerning the operation of this Act the then Superintendent of Public Instruction of Pennsylvania stated that:

. . . The law does not specify what version is to be read. The Catholic has as much right to read the Douay Version as the Protestant has to read the King James Version, or the Revised Version. The teachers have been urged to select passages over which there is no doctrinal controversy. It is not the function of the public schools to teach religion. That should be left to the home, to the Sunday school, and to the church with its various agencies.

. . . Passages can be selected to enforce the great truths which lie at the foundation of our civic and ethical life . . .

Thus, from the time of the passage of the Act of 1913 the use of the Holy Bible as an instrument either of religious instruction or sectarian doctrine was officially discouraged. The administration of the Act from its inception comprehended the separation of the teaching of religious doctrine from the public-school system.

Since the passage of this Act the practice has been continuously required by statute in the Commonwealth. The present Superintendent of Public Instruction of Pennsylvania considers that the practice has both educational and moral value for the students.

At the Abington Senior High School the practice is conducted as follows: Between 8:15 and 8:30 of each school morning, while the students are in their home rooms or advisory sections, there is heard over the public-address system a morning program which includes the reading by one student of ten verses of the Bible without comment, the saying of the Lord's Prayer, the flag salute, and the school announcement for that particular day. . . . The pupil who reads the verses from the Bible may use any version of the Bible, and the King James Version, the Catholic Douay Version, the Jewish Holy Scriptures, and the Revised Standard Version have been so used. The particular verses to be read by the students are selected by the students. In the radio room there is posted an excerpt from a teachers' roll book entitled "Suggested Readings." Such readings were not compulsory and there is no evidence of the extent to which they were employed by the pupils, if at all.

At the Huntingdon Junior High School the practice is conducted as follows: Each day at the opening of school there is a home room period of approximately eight minutes during which the Bible-reading, the Lord's Prayer,

and the salute to the flag occur. The ten verses of the Bible are read without comment either by the home room teacher or by a pupil who has volunteered or has been selected for the privilege by the teacher. The selection of the verses to be read is made either by the teacher or the pupil who does the reading. The particular Bible that is made available for this practice in the school rooms is a King James Version that does not contain the dedicatory epistle or superscriptions to which specific reference was made by counsel for the plaintiffs at the conclusion of his case when he offered in evidence a copy of his own King James Version which did contain such a superscription.

Although the practice of Bible-reading and prayer-saying has been followed for many years in the Commonwealth, there is no evidence that, with the exclusion of the particular instance involving the present plaintiff Ellory Schempp, there ever has been a complaint concerning such practice lodged by any pupil or parent, and the Superintendent of Public Instruction of Pennsylvania, the Superintendent of Schools of Abington Township, the Principal of the Abington Senior High School, and the Principal of the Huntingdon Junior High School, have testified that in all their long experience they have received no such complaint.

In both the senior and junior high schools the pupils are expected to be attentive during the morning program, that is, to exhibit the ordinary good behavior expected of a student in attendance at school. No affirmative act of participation in the exercises is enforced against the pupils. There is no evidence that any child has been expelled, suspended, or visited with any lesser form of discipline for nonparticipation in the exercises.

Plaintiffs seek to have the foregoing practices prohibited by injunction and declared to violate the Constitution of the United States. They allege that such practices violate their religious conscience and liberties despite these facts:

(1) that one of the children has been graduated from the Abington School District and the controversy with regard to him is moot;

(2) that another child only decided that he had strong feelings regarding the practices when he realized that his brother would be graduated before this case would come to court;

(3) that the other child *volunteered* more than once to read the Bible verses to her class; and

(4) that neither parent (plaintiffs herein) at any time complained of the practice to any teacher or person of authority within the School District nor asked that their children be excused.

Argument

I. *Reading without comment ten verses of the Bible at the opening of each school day neither affects, favors, or establishes a religion within the meaning of the First Amendment to the Constitution of the United States.*

The issue in this case is not whether a tiny fraction of the school day may properly be devoted to sectarian purposes, nor whether a small amount of religious instruction may be mingled with everyday secular instruction, nor even whether the basic religious beliefs that are acceptable to the vast majority of the people of this Commonwealth may be alluded to in our public schools. Rather, the question with which we are here concerned is whether the statute of Pennsylvania that requires Bible-reading in its public schools is a law "respecting an establishment of religion."

Here we are not concerned with "released time" nor with defining the limits to which a public-school system may go in accommodating the religious convictions of various sects, nor with the nature and dimensions of the "wall" which must separate state and church. Rather, we are here concerned with the question whether this controversy concerns the church at all.

Our problem does not include the conflicting interests of warring sects nor a controversy between the religious and the nonreligious. Rather, it ultimately resolves itself to two basic questions: (1) whether this educational practice as required of the public schools of Pennsylvania is so inherently sectarian as to constitute an establishment of religion, and, if so, (2) whether the plaintiffs have standing to maintain this action in the absence of compulsion.

The Abington School Board asserts that the Bible-reading practice mandated by the statute here questioned is morally uplifting, educational in character, and properly inspirational. However, we respectfully contend that this practice is not, nor does it in practice become the establishment of a religion, nor a sectarian practice violative of the plaintiffs' right of freedom of worship or any freedom protected by the First Amendment. . . .

As the challenged practice in the Abington schools does not concern churches, organized religion or beliefs, it is the position of the defendants that the practice of Bible-reading in our public schools is not one proscribed by this interpretation of the First Amendment.

To some people all things of this world are illumined, to a greater or less degree, by their personal religious fervor and, consequently, to such people nothing is completely free of religious significance. However, in determining whether a challenged practice is one "respecting an establishment of religion" the Court is not bound by the subjective view of any person, but must itself decide objectively whether the practice in fact concerns religion within the meaning of the First Amendment. Although

a proper and understandable regard for the religious or nonreligious feelings of any individual will insure that great weight be given his statement that a certain thing is "religious," judicial logic must nevertheless preclude the acceptance of his statement as fact simply because he seriously believes it to be true. That the subjective views of such individuals should not necessarily be controlling was emphasized by Justice Jackson in his concurring opinion in the *McCollum* case where he said in part as follows:

To me, the sweep and detail of these complaints is a danger signal which warns of the kind of local controversy we will be required to arbitrate if we do not place appropriate limitation on our decision and exact strict compliance with jurisdictional requirements. . . . If we are to eliminate everything that is objectionable to any of these warring sects or inconsistent with any of their doctrines, we will leave public education in shreds. Nothing but educational confusion and a discrediting of the public-school system can result from subjecting it to constant law suits.

While we may and should end such formal and explicit instruction as the Champaign plan and can at all times prohibit teaching of creed and catechism and ceremonial and can forbid forthright proselyting in the schools, I think it remains to be demonstrated whether it is possible, even if desirable, to comply with such demands as plaintiff's completely to isolate and cast out of secular education all that some people may reasonably regard as religious instruction.

The Bible-reading practice required by the statute of Pennsylvania does not concern itself with doctrine. It does not constitute religious instruction. It is not directed to converting or proselyting. It is devoid of sectarian significance, and we, therefore, contend that such practice neither affects, favors, or establishes a religion nor favors one religion over another or over no religion. Particularly is this so when it is apparent that the reading is "without comment," that it is not devotional in character, and that there is total absence of teaching of any religious doctrine.

A. *The intent of the Legislature of Pennsylvania*

That the Legislature of Pennsylvania did not consider the practice of Bible-reading to be religious or sectarian is apparent from an examination of certain Pennsylvania statutes dealing with the operation of its public schools. . . .

It will be noted that—

(1) The Act expressly commands that the verses shall be read "without comment." Any exposition, interpretation, or explanation is expressly prohibited. No religious instruction or teaching is contemplated, practiced, or permitted.

(2) The Act does not specify the use of any particular version of the Bible, but directs simply that ten verses of the "Holy Bible" be read.

(3) The Act does not specify that any particular portion of the Bible shall be selected for such reading.

This section is substantially a re-enactment of Sections 1 and 2 of an earlier Act of 1913 [which] contained the following preamble:

Whereas, The rules and regulations governing the reading of the Holy Bible in the public schools of this Commonwealth are not uniform; and

Whereas, It is in the interest of good moral training, of a life of honorable thought and of good citizenship, that the public-school children should have lessons of morality brought to their attention during their school days. . . .

This preamble, in the light of which the practice has since been continued, clearly emphasizes a desire for uniformity in a practice designed to foster morality and good citizenship, not the establishment of a religion. . . .

This practice is discussed on page 3 of the report of Nathan C. Schaffer, Superintendent of Public Instruction of Pennsylvania for the year 1913, as follows:

Bible-reading in the Public Schools

The School Code [of 1911] makes no mention of the reading of the Bible. Heretofore this was a question to be decided by the local board of school directors. The last legislature passed an act making the daily reading of at least ten verses from the Holy Bible obligatory in all the public schools of Pennsylvania. The law does not specify what version is to be read. The Catholic has as much right to read the Douay Version as the Protestant has to read King James Version, or the Revised Version. The teachers have been urged to select passages over which there is no doctrinal controversy. It is not the function of the public schools to teach religion. That should be left to the home, to the Sunday school, and to the church with its various agencies.

On the great questions of morality the Protestant, the Catholic and the Jew are in agreement. Passages can be selected to enforce the great truths which lie at the foundation of our civil and ethical life. . . .

Article I, Section 3 of the Pennsylvania Constitution of 1874 provides:

All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; no man can of right be compelled to attend, erect, or support any place of worship, or to maintain any ministry against his consent; no human authority can, in any case whatever, control or interfere with the rights of conscience and no preference shall ever be given by law to any religious establishments or modes of worship.

Article 10, Section 2 of the same Constitution provides:

No money raised for the support of the public schools of the Commonwealth shall be appropriated to or used for the support of any sectarian school.

From the foregoing it appears that the people of Pennsylvania and their legislators long have been following the policy of avoiding sectarianism in their public schools. Conscious of this problem, they adopted laws designed specifically to prevent the introduction of sectarianism and accordingly, when they sanctioned by statute their long-time custom of Bible-reading in the schools, they insured its nonsectarian nature by providing that such reading be "without comment."

B. *The King James Version of the Bible is not a sectarian document.*

The statute of Pennsylvania requiring Bible-reading states only that the Holy Bible should be used . . . and the testimony indicates that in the Abington School District at least, the King James Version, the Catholic Douay Version, the Revised Standard Version, and the Jewish Holy Scriptures have been used. Despite the foregoing, it is the contention of the plaintiffs that the King James Version is used and that the King James Version is Protestant, hence sectarian. If such reasoning be adopted, it would follow that *any* reading of *any* portion of the King James Version is the promulgation of Protestant sectarian doctrine, and that such reading prefers one religion over another, and therefore amounts to the establishment of a religion in violation of constitutional guaranties. Such an argument would proscribe the reading without comment of the Sermon on the Mount, the Ten Commandments, the Twenty-third Psalm, the Parables, and any number of passages of infinite beauty and tremendous impact upon Western civilization solely because they are readings taken from within the four corners of a book described as the "King James Version" of the Holy Bible. . . .

The King James Version, like any other version of the Bible, is simply a printed translation of ancient documents. Both the plaintiffs' and the defendants' experts agree that all versions of the Bible derive from the same early sources, and what little variation exists among such versions may be attributed to the competence and scholarship of the translators. It is only when a particular sect promotes certain of the translations as being the only acceptable revelation of God's word that we encounter sectarian connotations, and only then does it become a sectarian document.

Consequently, it is not the version itself but rather *the use to which it is put* that must be examined in order to determine the existence of sectarian significance. As any version may be sectarian when used for certain purposes, so may it also be nonsectarian when used for other purposes. Thus, when a text from the King James Version is employed as the basis of an Episcopal sermon, it is sectarian; when it is read in a college lecture on English literature it is not sectarian. When the Gideon Bible is distributed by an evangelical society in order to spread the Christian faith, it is sectarian; but when it is taken home by a hotel guest who is an atheist, it is not sectarian, for to him it is only a collection of ancient stories and moral teachings. It is the use to which it is put rather than the nature of a document that gives it a sectarian significance.

There are those who would say that the Bible came into being only as a result of God's revelation of his covenants with man and that it was not written to serve as an example of literature, nor as a collection of moral precepts nor as a historical account of the early times. Accordingly, such people hold that there can be no such thing as a nonreligious or nonsectarian

use made of a document whose origin was so purely religious. With respect to this argument it is probably true that the original writings that make up the various books of the present-day Bible were undoubtedly the works of men inspired by religious experience. Also, it would be idle to deny that such original writings were intended by their writers as religious and sectarian documents. Thus, when Paul wrote to the church at Corinth, he was instructing that church in religious matters and his letter at that time was truly a sectarian document.

However, with the passage of the years, Paul's letter to the Corinthians has become something both more and less than a sectarian document. As the religious expression within such letter concerned fundamental and timeless truths and beauty, its meaning and value, apart from any religious significance, remain to this day.

To suggest that reading at opening school exercises the words from St. John "greater love hath no man" is a sectarian practice because the setting in which the words were uttered two thousand years ago was in fact religious in character, and the words were uttered to bring listeners into a new religion overlooks completely the nonsectarian nature of the occasion. Such challenged excerpts transcend sectarian overtones. Such passages are part of the world's literature. Their rendition by reading or recitation has become identified with the moral teachings of the ages. As the reading of these daily verses may conceivably be the only exposure which many of our school children ever will have to words of the Holy Bible, a holding that such reading violates the plaintiffs' right to the free exercise of their religious beliefs might well deprive such children of their only opportunity to listen to moral precepts which have helped to foster Western civilization. Such surely was not the intended "protection" contemplated by the Bill of Rights.

Just as Demosthenes' Philippics were, when originally given, purely political orations, they have survived to become something more than verbal political weapons. Because of their classic style and grace, their clarity and form, they have been studied by succeeding generations of students who were not, nor were they expected to be, concerned with the political situation in Athens.

The ancients built statues and temples to their pagan gods. These were intended by the sculptors and architects to be for religious purposes. Those which now survive are widely esteemed for their beauty as works of art and not for their religious meaning.

The Bible, of course, retains religious significance for a vast number of people, but not all. Both to those who believe in it and those who do not, it has other uses. Is its use in a secular manner on a secular occasion to be forbidden because its religious significance has not disappeared as in the case of the temples of antiquity?

Thus, although a writing may have in its genesis only one intended use, be it religious, political, military, or the like, still the passage of the years may give it other uses if such writing contains fundamental moral truths or beauty of expression. Accordingly, today when we read Paul's letter in the

book of Corinthians, it still may have its sectarian use as an advisory letter to present-day Christian churches, but it also can be and is used in a nonreligious and nonsectarian sense as an unparalleled expression of English literature, as an unexcelled collection of moral precepts, or as a historical account of the happenings in the ancient days.

The authorities clearly support the foregoing analysis of sectarian practice. In *Evans v. Selma Union High School,* it was held that the Bible itself is not a sectarian book. To be sectarian a book must be used to teach the peculiar dogma of a sect as such, and no book alone is sectarian merely because it is so comprehensive as to include that which could be interpreted as dogma by its readers. The King James Version, the Douay Version, the Koran, and the hosts of other similar documents, are not in and of themselves sectarian books, and the reading thereof without comment in the public schools does not constitute sectarian instruction.

C. *The method by which the Bible is read in the Abington schools does not constitute a sectarian practice nor tend to establish a religion.*

Accordingly, the actual "use" made in the Abington schools of the King James and other versions determines what, if any, sectarianism or establishment of religion exists in the Bible-reading practice. In the Abington schools each day ten verses of the Holy Bible, selected at random, are read to the students without comment. Such Bible-reading is the first phase of the opening exercises of the school day. After the reading there is the saying of the Lord's Prayer. Directly following the prayer there is the salute to the flag which, in turn, is followed by the announcement of notices, assignments, and similar advices that may be required for the conduct of the school day. With regard to the actual reading of the Bible there are no prefatory statements made, no questions are solicited, no comments or explanations are made before, during, or after its reading. No instruction is contemplated; no interpretation is given. Inspiration there may be; sectarian religious approach there is not. No one says to the children, "Listen now to the Word of God"; no one says, "This is a most significant passage"; no one says, "This is true or this is false"; no one says, "This means" so and so. The ten verses are simply read to the children, who may listen, may accept, reject, believe, or disbelieve any part or all of what they hear. No participatory act is required of a student except that he demonstrate that attentive attitude which is required of him during the entire school day. What significance he draws from this practice is completely a matter of his own choice, as there is no promotion, dissuasion, or persuasion other than what he finds in his own conscience. Certainly there is here no sectarian "use" being made of the King James or any other version of the Bible. Certainly the statute requiring this practice is not a law "respecting the establishment of religion."

That the sectarian character of a questioned practice depends upon the purpose of the practice or the use to which a thing is put is well illustrated by the case of *Baer v. Kolmorgen,* decided by the Supreme Court of New

York, Westchester County, on December 18, 1958. There the local school board granted permission for the creation and maintenance, with private funds, of a crèche on the school lawn during the Christmas vacation. An injunction was sought on the ground that the action of the board violated constitutional guarantees of freedom of religion. . . .

[The Court said]:

The crèche is undoubtedly a religious symbol. In viewing it, however, we are all free to interpret its meaning according to our own religious faith. If any public body were to limit that freedom or if any public institution were to give instruction as to its meaning there would, unquestionably, be a constitutional violation. That, however, is not this case. Here the school board has done no more than to make a small portion of its property available for the display. . . . If such accommodation violates the doctrine of absolute separation between church and state, then it is time that that doctrine be discarded once and for all. . . .

II. *Reading without comment ten verses of the Bible at the opening of each school day does not violate the religious conscience of any pupil or parent.*

A. *The compulsion necessary to constitute a violation of a constitutional right does not exist.*

Under the Constitution a citizen has an absolute right to freedom of his religious conscience. This means that a person can believe or disbelieve anything and no law may be enacted to curb this freedom of thought or the right to religious belief according to the conscience of the individual. To constitute a violation of this absolute right it must appear that a compulsion has been exerted on the person who asserts that his religious freedom has been violated. The constitutional guaranties of the First and Fourteenth Amendments were not intended to insulate a person from exposure to doctrines or philosophies to which he does not or cannot subscribe. One might well abhor the atheism of Robert Ingersoll, but does such abhorrence, even though it attain the dignity of offense to conscience, justify the suggestion that to read passages of his great orations would tend to the establishment of atheism, unless compulsion were exerted to subscribe to the philosophy of the author? One might conscientiously refuse to subscribe to the doctrine of the divinity of Christ, to the virgin birth, to the revelation of the New Testament; but unless an attempt is made to proselyte in favor of one religion over another, or by comment or compulsion one is asked to subscribe to religious doctrine, exposure to the eternal verities of the Sermon on the Mount does not violate the guaranteed right of the individual pupil to free exercise of his religious beliefs. It is only when compulsion to conform to doctrine appears that the constitutional immunities may be asserted. . . .

The plaintiffs have totally failed to establish any compulsion in this case. The only "compulsion" which has been suggested deals not with beliefs or disbeliefs, but rather with the simple requirement that all pupils at the Abington schools shall be orderly, attentive, and respectful at all times. It would seem that such a type of discipline should be commended and not condemned; more of it might well be required today. To maintain the discipline necessary for good scholarship, the Abington School Board requires that all its pupils, during Bible-reading and at all other times, evidence this orderly conduct. However, there is no compulsion upon them during the Bible-reading to believe, accept, or even acknowledge what is being read to them. They are not . . . required to participate in any way by publicly affirming, confessing, declaring, or saluting. Consequently, the compulsion necessary to establish a violation of religious conscience is completely absent in this case. . . .

B. *A public reference to the Almighty does not constitute a violation of the Constitution.*

There may be those who say that regardless of whether the Bible is accepted as divine revelation or merely as a collection of moral teachings and literary essays, the fact that it often concerns itself with God violates their nonreligious convictions. However, although it is true that no person can be compelled to acknowledge a Supreme Being, certainly no person can prevent the public mention of his name. In this country it has long been held that reference to an Almighty in the everyday affairs of our nation violates no part of our Constitution. As Justice Douglas, speaking for the majority of the Court, said in *Zorach v. Clauson*, where it was held that the New York City released-time program for education was constitutional:

. . . Otherwise the state and religion would be aliens to each other—hostile, suspicious, and even unfriendly . . . Prayers in our legislative halls; the appeals to the Almighty in the messages of the Chief Executive; the proclamations making Thanksgiving Day a holiday; "so help me God" in our courtroom oaths—these and all other references to the Almighty that run through our laws, our public rituals, our ceremonies would be flouting the First Amendment. A fastidious atheist or agnostic could even object to the supplication with which the Court opens each session: "God save the United States and this Honorable Court."

C. *Plaintiffs have proved no actual violation of their consciences.*

An examination of the record clearly indicates that the Bible-reading practice at Abington did not, in fact, violate the religious conscience of the plaintiffs. The plaintiffs do not allege, nor does the evidence indicate, that their right to practice freely their religious faith has been invaded, or that their right to worship in accordance with the dictates of their conscience has been suppressed or curtailed. Nor does it appear that the teachers, or the

school district, the state, or anyone has endeavored to foist upon plaintiffs the doctrine or practices of any particular religion. Apart from the logical conclusion that the two or three minutes devoted to Bible-reading was too small a part of the school day to affront the conscience of any reasonable person, it is also apparent that:

(1) The issue of the religious conscience of Ellory Schempp is moot since he has already been graduated from the Abington school . . . ;

(2) With respect to Roger Schempp, it is clear that he accepted the Bible-reading practice until it was suggested to him that he, as a person in the lower grades, would make a more effective plaintiff than his brother Ellory Schempp, who would soon be graduated;

(3) With respect to Donna Schempp, the foregoing item (2) is applicable and, in addition, we have her own testimony that on more than one occasion she volunteered to read the Bible in class;

(4) With respect to the plaintiff-parents, it would appear that their failure at any time to object to the Bible-reading, either to the teachers or to anyone in authority at Abington, impels the conclusion that until the institution of this litigation they did not seriously consider the practice to violate their religious consciences.

The question, however, of whether the plaintiffs' or any person's religious consciences can be held to be violated by the practice of reading the Bible goes beyond the point that the plaintiffs have not opposed or complained of or been harmed by the practice. Even if they had shown that they considered it deeply offensive, none of these children and no other child at Abington has been or would be compelled to believe or affirm a belief in what is read, or in any interpretation of what is read. Their personal beliefs and disbeliefs remain inviolate and unaffected by anything done in the Abington schools.

Undoubtedly the plaintiffs object to the practice and have therefore brought this suit. Their objection, however, is not to the violation of a fundamental constitutional right although they have attempted to so clothe it. They and their parents disagree with some passages that are read or contained in the book. They do not accept it "literally." They attend a Unitarian Church, however, and do not wholly ignore the Bible in their own religion. Their disagreement is with the meaning of certain passages, the selection of certain parts to be read, and the interpretations of such passages by different sects. They therefore disagree with a method of using the Bible in school, because it is not their preferred method. Their view on this, however sincerely held, cannot rise to the dignity of a constitutionally protected right.

III. *The right to freedom of religious conscience does not include a right to practice one's beliefs or disbeliefs concerning the Bible by preventing others from hearing it read in the public schools.*

The concept of religious liberty embraces two rights. First, there is the absolute right to freedom of religious conscience. Secondly, there is the

right of a person to freely practice his religious beliefs. The cases, however, establish that this right is not absolute but is qualified to the extent that it may not be invoked where its exercise would result in harm to other individuals or society as a whole. Examples of the recognition of these two rights may be seen in the following cases:

1. *The absolute right to religious conscience.* In the *Barnette* case it was held that a child could not be compelled to salute and pledge allegiance to the flag because his action in refusing to comply was a matter of his own conscience. He could not be compelled to acknowledge any particular concept or significance of the country or its flag. His refusal did not harm or restrict others in their beliefs since they remained free to continue the practice if they so desired, for the *Barnette* decision held only that the child could not be compelled to salute. It did not hold, as plaintiffs here contend, that because of his objection to the practice all the other children should be denied the opportunity to salute, or evidence their faith in the flag and allegiance to the nation. The individual's absolute right to freedom of religious conscience thus was recognized and protected. Equally recognized and protected was the concurrent right of other individuals who believed in saluting the flag, and publicly pledging their allegiance to it, to demonstrate their faith though such demonstration may have been offensive to the followers of Jehovah's Witnesses.

2. *The qualified right to practice religious beliefs.* In *Reynolds v. United States*, and the later Mormon cases, it was held that a person had the right to believe that his conscience told him that plural marriage was proper, required, and ordained by God. He was not permitted, however, to practice such belief by engaging in plural marriage since in so doing he would harm others and society. Chief Justice Waite, in delivering the opinion of the Court in the *Reynolds* case, said:

. . . Laws are made for the government of actions, and while they cannot interfere with mere religious beliefs and opinions, they may with practices . . .

Thus it is clear that the plaintiffs have the absolute right not to accept, believe in, or attribute any significance to any part or all of the Bible since this is a matter of their own religious conscience. However, their right to practice this nonacceptance, belief or disbelief, is qualified in that such practice may not infringe the rights of others at Abington. If they have a conscientious objection to hearing the Bible read at public school, it does not follow that they have the right to deny to other pupils the right and the opportunity to participate in a long-established custom deemed by the Legislature to be beneficial in the education of the children of Pennsylvania. . . .

And again in *Church v. Bullock*, where the Court refused to hold that its State Constitution prohibited the reading of the Bible, the offering of prayers, or the singing of religious songs in the public schools, the Court declared:

. . . It does not follow that one or more individuals have the right to have the Courts deny the people the privilege of having their children instructed in the moral truths of the Bible because such objectives do not desire their own

children to be participators therein. This would be to starve the *moral and spiritual natures of the many out of deference to the few.* (Emphasis supplied)

It is particularly with regard to their attitude concerning this qualified right that the fundamental error in plaintiffs' thinking is revealed, for they resent and would change the long-accepted traditions, desires, and practices of the majority so as to conform to the concepts of a small minority. Although the First Amendment was designed to protect the minority in their beliefs it was never intended to prevent the majority from participation in a practice that in no way harms the minority or detracts from their essential freedom. In the *Zorach* case, *supra,* Justice Douglas, in asserting that a state could co-operate with religious authorities, said in part:

. . . To hold that it may not would be to find in the Constitution a requirement that the government show a callous indifference to religious groups. That would be preferring those who believe in no religion over those who do believe . . .

The guaranties of the First Amendment were designed as a shield to protect the rights of a minority against the tyrannies of the majority. They were not conceived to be used as weapons to enable the minority to strike down the ethical or spiritual aspirations of the majority. . . .

If the legislative practice of Bible-reading in Pennsylvania is here enjoined, school children may no longer learn through Bible-reading of the Ten Commandments (Exodus 20:1-17); may not hear read the Twenty-third Psalm with its glorious promise of divine help in time of human frailty—"thy rod and thy staff they comfort me" (Psalm 23); will not be permitted to feel the inspiration which flows from the simple affirmation "I will lift up mine eyes unto the hills, from whence cometh my help" (Psalm 121), all because they have been adopted from a book sacred to many; nor will they be exposed in their school day to the Sermon on the Mount: "Blessed are the peacemakers: for they shall be called the children of God" (Matthew 5:9)—merely because those words were uttered by a man whose divinity may be denied by those who hear his words. In face of the devastating materialism of the present, are the children of our schools to be precluded on the basis of another's religious conscience from hearing the eternal truths of St. Paul's Epistle to the Romans (Rom. 12:1-21) with its simple exhortation for human conduct: "if thine enemy hunger, feed him; if he thirst, give him drink"? Can the historic fact that, when he wrote two thousand years ago to the Corinthians, Paul was seeking to establish a new church alter the powerful impact for good of the words of his great Epistle: "Though I speak with the tongues of men and of angels, and have not charity, I am become as sounding brass, or a tinkling cymbal" (I Cor. 13:1-13)? . . .

The right of the plaintiffs freely to practice their religious beliefs is conceded. We submit, however, that the people have the right to determine the type of education to be afforded in the public schools. They have the right to insist that a public-school education shall include the inculcation of moral values and truths, an appreciation and understanding of the book on which

secular and nonsecular authorities agree as to its monumental literary standing, and knowledge and understanding of the Judaic-Christian tradition of Western civilization without which no child can be truly educated in world history, American history, or the nature of political and social institutions of this and other lands. . . .

Viewed in proper context, it is apparent that the plaintiffs' objection to reading of the Bible in public schools is not fundamental, even to them, and even though they may choose to call it fundamental. Their objection reduces itself to a matter of taste, or a matter of personal preference—their desire that the religious (or nonreligious) training of children in church or in home be so insulated from their education in public school that never the twain shall meet. They desire that children in school should hear nothing from a book that deals with religion, lest they become "confused." The Legislature, not sharing this desire, has provided otherwise.

IV. ***Reading without comment ten verses of the Bible at the opening of each school day is an aid in developing the mind and morals of school children, and a state has a constitutional right to employ such practice in its educational program.***

. . . Why the people of Pennsylvania, through custom and legislation, have required the reading to their school children of passages from it or other versions of the Holy Bible is aptly set forth in the testimony of Dr. C. H. Boehm, Superintendent of Public Instruction for Pennsylvania:

A. I think that the reading of the Bible, ten verses without comment in the morning of each day, places upon the children or those hearing the reading of this, and the atmosphere which goes on in the reading, is one of the last vestiges of moral value that we have left in our school system. This stands out as a strong contradiction to the materialistic trends of our time.

Q. And that is your opinion as Superintendent of Public Instruction, is that correct, Doctor?

A. Yes, it is.

Q. Now, may I ask you whether you have any opinion as to the effect upon the educational system should this practice of Bible-reading as prescribed by the Act be taken away?

A. I have. I know of nothing at this time which could replace the reading of the Bible.

In support of this belief of the people of Pennsylvania there is also the testimony of Dr. Luther A. Weigle, Dean Emeritus of the Yale Divinity School, considered by many to be the foremost living authority on the Bible and its translation, who testified that not only is the practice of reading the Bible without comment in the schools a nonsectarian practice, but also that, based on his experience as an educator, such practice is of sound educational value: . . .

Q. What kind of educational value do you think it possesses, sir?

A. It possesses a moral educational value, because, after all, the Bible is the record of the experience of the people that discovered what God really is like, and has given us the Ten Commandments and other moral precepts which are contained in the Holy Bible.

It is of very high literary value because the King James Bible is what one authority has called the noblest monument of English prose. It has contributed to the making of the English language as no other English book has done.

It is of great value, it seems to me, to the perpetuation of those institutions and those practices which we ideally think of as the American way of life, because the Bible has entered vitally into the stream of American life.

We believe the Court should reject the contention, which is implicit in the plaintiffs' position, that the Bible has no more of a place in our schools than the Koran. Familiarity with the Koran, too, may well be regarded as a proper educational matter. But in the Commonwealth of Pennsylvania, in the United States of America, we are the inheritors of the Judaic-Christian tradition, and that tradition, its history and its expression, is preserved most particularly in the Bible. Without knowledge and understanding of that tradition, a child would be inadequately schooled in world history, in American history, and in the understanding of political institutions. The Legislature can properly prescribe the content of the educational program and it could properly conclude that daily exposure to reading from the Bible best achieves this educational objective. Certainly the people, through their Legislature, may insist that education of children shall be more than the teaching of facts and figures and technical skills, that it include at least the exposure to this book.

To so conclude detracts nothing from the rights of Mohammedans or others to believe in the Koran, to read it, and worship according to it. Nor does it detract from the right of these plaintiffs to continue in or assert their disbelief in any portions of the Bible. . . .

V. *The custom of saying the Lord's Prayer at the opening of each school day neither concerns an establishment of religion nor violates the religious conscience of any pupil or parent.*

As the practice of saying the Lord's Prayer at the Abington schools each morning is not required by statute but, rather, is a custom of the schools, it is considered separately in this brief. Such custom, however, effects no violation of any protected rights under the Constitution for the following reasons:

(1) It cannot be effectively demonstrated that anyone who believes in God can have any objection to the Lord's Prayer. It contains not one word relative to Christ or any belief with respect to God which the Jew does not have in common with the Christian. True, it was given to Christianity by Christ, but it is addressed to "Our Father which art in heaven." Jews would have no objection to such denomination, for throughout the Old Testament Jehovah

God is spoken of as the father of the Jews. In addition, there is testimon by the plaintiffs' expert, Dr. Grayzel, himself a Jew, to the effect that sub stantially all the language of such prayer first appears in various rabbinica literature.

(2) With respect to the nonreligious and those who are neither Christia nor Jew, there is no evidence to the effect that any pupil is required to repea the prayer or attach any sectarian significance to it. It cannot reasonably b suggested that anyone's religious conscience may be affronted by hearing others say the prayer since it does no more than express reverence for Go and trust in him (as does the Declaration of Independence) and praise fo him (as does "The Star-spangled Banner").

(3) The saying of the Lord's Prayer each morning, like the reading o the Bible (in which the Lord's Prayer twice appears), is an aid in developing the whole character of the pupil by inculcating in him respect, humility, an an appreciation of the nonmaterialistic values of life. . . .

VI. *In the absence of compulsion the plaintiffs have no standing to maintain this action because they have not shown that they have been deprived of liberty or property.*

The Court will not consider the constitutionality of a statute or of a prac tice in a vacuum. Jurisdiction depends upon the existence of a justiciabl case or controversy. The plaintiffs must show that they have been injured i their constitutional rights in order to maintain the action. Since the plaintiff have not shown that they have been deprived of liberty or property, it i submitted that it is unnecessary for the Court to consider the constitutiona questions.

Thus, in *Doremus v. Board of Education*, in which the plaintiffs con tended that a New Jersey statute providing for reading the Bible in publi schools was unconstitutional, the Supreme Court of the United States dis missed the appeal as moot, because the child of the plaintiff-parent had grad uated from school and the rights of such child were therefore moot. Al though plaintiffs contended that they were still entitled to maintain th appeal as citizens and taxpayers, the Supreme Court held that the suit coul not be maintained as a taxpayer's action because the plaintiffs had not show that taxpayers had any financial interest in the case or were in any immedi ate danger of sustaining direct injury in measurable amount or that th practice of reading the Bible in the school added any sum to the cost of con ducting the school.

Accordingly, the appeal was dismissed for lack of a justiciable contro versy.

The present action is not a taxpayer's suit and cannot be maintained a a taxpayer's action. The plaintiffs . . . do not allege that the practice c

ible-reading or the practice of reciting the Lord's Prayer adds any measur-ble amount to the cost of conducting the schools. Although the defendant chool district has procured Bibles, together with other school supplies, there s no evidence of the extent of the expenditure. Obviously such expenditure s minimal and nominal. . . .

Decisions of the Court . . . make it clear that the Court will not invali-ate a practice alleged to be an unconstitutionl establishment of religion un-ess the plaintiffs show that they have sustained injury either as taxpayers r as parents of pupils compelled to participate in a religious ceremony in iolation of their constitutional freedom of worship. . . .

We have already dealt with the question of fact as to whether any com-ulsion has been shown. As we have previously pointed out, there is no evi-ence of compulsion in this case. Neither the Schempp children nor any ther children in the public schools of Abington Township are compelled to articipate in the Bible-reading exercise or in the recitation of the Lord's rayer. They have not been and would not be expelled, threatened with ex-ulsion, or subjected to any other form of discipline for refusing to partici-ate.

In the *Barnette* case the plaintiff's child had been expelled for refusal to articipate in the compulsory flag salute. The court held that this violated his onstitutionally protected freedom. But in so holding, the Court made it very lear that a voluntary flag salute exercise in which school children could articipate or not as they chose, would not be banned by the Constitu-ion. . . .

It is therefore submitted that no constitutionally protected right of the laintiffs in their personal freedom or in their property has been violated y the practices of which they complain. It is therefore unnecessary for the ourt to determine the constitutionality of Bible-reading in the abstract. t is unnecessary to determine whether the reading of ten verses of the King ames Version is a sectarian or religious practice under the circumstances hown by this case. Even if we are wrong in our contention that such practice s entirely in accord with the purely secular approach to public education, he plaintiffs have not made out any case for relief. Their lack of standing o maintain the action because of the absence of any injury is an entirely ndependent basis for a determination in favor of the defendants.

Conclusion

We therefore submit that neither the statutory practice of Bible-reading nor the customary practice of prayer-saying, as conducted by defendants, violates any constitutionally protected rights of plaintiffs, for the following reasons:

(1) As such practices are educational and inspirational in nature and do not involve proselyting, sectarian instruction, churches, organized religion or beliefs, they neither affect, favor, or establish a religion within the meaning of the First Amendment to the Constitution of the United States.

(2) As there is no evidence to indicate that plaintiffs are compelled by these practices to accept, acknowledge, believe, or disbelieve in any religion or participate in any religious ceremony, the practices do not violate the religious consciences of the plaintiffs.

(3) As there is no evidence to indicate that these practices deprive plaintiffs of any property or restrict plaintiffs in their liberty to believe and practice their own religion, plaintiffs have no standing to maintain this action, for no justiciable case or controversy exists.

It is accordingly submitted that the Complaint shall be dismissed.

Respectfully submitted,
PERCIVAL R. RIEDER, ESQ.
C. BREWSTER RHOADS, ESQ.
Attorneys for Defendants

Opinion of the Court

[*Pertinent Sections*]

WE COME now to the basic issues. It is clear that the plaintiffs allege in their complaint that the practice of reading the "Holy Bible" with or without the addition of the recitation of the Lord's Prayer violates their constitutional rights. They argue also that the compulsory recital of the Lord's Prayer, solely, standing alone, i.e., not in conjunction with Bible-reading, is "sectarian." It might also be argued with equal force that the compulsory recital of the Lord's Prayer, solely, standing alone, constitutes an establishment of religion and a prohibiting of the free exercise thereof. But we do not and cannot reach issues relating to a ceremony which consists of the recital of the Lord's Prayer, Bible-reading being omitted therefrom. Such a case is not before us.

It could be argued, of course, that because the Bible verses were never read without being followed by the recital of the Lord's Prayer, the reading and the recital constitute a unitary whole which cannot be separated effectively for purposes of adjudication and only that unit, reading and recital together, is before us. The parties have not made such a contention, and we do not think that it would be a valid one. The reading of the ten verses preceded the recital of the Lord's Prayer and was separated from it on every occasion by an interval of time, however slight. We conclude that we are entitled to pass on and do pass on (1) the constitutional issues presented by the reading of ten verses of the Bible and (2) the constitutional issues raised by the reading of the Bible verses followed by the recital of the Lord's Prayer.

The Legislature prescribed the reading of the "Holy Bible." While many versions of the Bible exist, all are known primarily as books of worship. Their use in this connection comes first to mind. Inasmuch as the verses of the Bible address themselves to, or are premised upon, a recognition of God, the Bible is essentially a religious work. To characterize the Bible as a work of art, of literary or historical significance, and to refuse to admit its essential character as a religious document would seem to us to be unrealistic. (During the course of cross-examination of Dr. Weigle, the following passage from his book *The English New Testament*, was quoted: "The message of the Bible is the central thing, its style is but an instrument for conveying the message. The Bible is not mere historical document to be preserved. And it is more than a classic of English literature to be cherished and admired. The Bible contains the Word of God to man. . . .") The question is, accepting the "Holy Bible" as a religious document, regardless of the version involved, is its use in the manner prescribed by the statute violative of the terms of the First Amendment?

The verses of the Bible, though they are of great literary merit, are er bodied in books of worship, regardless of the version, devoted primarily bringing man in touch with God. If study of the Bible as an artistic work, treasury of moral truths, or historical text can be separated from the espous of doctrinal matters and religiousness, we should find no objection. But th manner in which the Bible is employed as required by the legislative fi does not effect this division. The daily reading of the Bible, buttressed wi the authority of the State and, more importantly to children, backed with th authority of their teachers, can hardly do less than inculcate or promote th inculcation of various religious doctrines in childish minds. Thus, the pra tice required by the statute amounts to religious instruction, or a promotio of religious education. It makes no difference that the religious "truths inculcated may vary from one child to another. It also makes no differen that a sense of religion may not be instilled. In *Everson v. Board of Educ tion,* the Supreme Court stated, "The 'establishment of religion' clause the First Amendment means at least this: Neither a state nor the Feder Government can set up a church. Neither can pass laws which aid one re gion, aid all religions, or prefer one religion over another." In our vie inasmuch as the Bible deals with man's relationship to God, and the Pen sylvania statute may require a daily reminder of that relationship, th statute aids all religions. Inasmuch as the "Holy Bible" is a Christian doc ment, the practice aids and prefers the Christian religion. . . .

The reading of the Bible without comment, the defendants assert, permi each listener to interpret what he hears in the fashion he desires, and th therefore there is no inculcation of religion. This argument falls for tw reasons. First, it either ignores the essentially religious nature of the Bibl or assumes that its religious quality can be disregarded by the listener. Th is too much to ignore and too much to assume. The religiousness of the Bibl we believe, needs no demonstration. Children cannot be expected to sift o the religious from the moral, historical, or literary content. Second, the tes mony of the Schempps and Dr. Grayzel proves that interpretations of t Bible, dependent upon the inclinations of scholars and students, can resu in a spectrum of meanings, beginning at one end of the spectroscopic fie with literal acceptance of the words of the Bible, objectionable to Unitaria such as the Schempps, and ending in the vague philosophical generaliti condemned by fundamentalists. (We note parenthetically the statement the Court in *West Virginia State Board of Education v. Barnette*, speaki of the flag and the flag salute: "A person gets from a symbol the meani he puts into it, and what is one man's comfort and inspiration is anothe jest and scorn.") Of course children will interpret the Bible and will do in terms of their religious instruction and in such a way as to make wh they hear conform to their own religious commitments, generally those stilled by their parents. A contrary view seems to us to be untenable.

It is clear from the evidence that the school children had to maintain, d ing the course of the morning exercises, a respectful mien more in keepi

ith a devotional or religious rite than with ordinary classroom instruction. he reading of the ten verses without comment was followed by a recital of ie Lord's Prayer. The combination of the reading of the ten verses of the oly Bible, followed immediately by the recitation of the Lord's Prayer, in ur opinion gives to the morning exercises a devotional and religious as- ect. Indeed, the morning exercises were referred to on frequent occasions y the students as "morning devotions." Counsel for the School Board re- rred to the ceremony as "devotional services." The addition of the flag lute to the ceremony cannot be deemed to detract from the devotional uality of the morning exercises. Our backgrounds are colored by our own xperiences and many of us have participated in such exercises as those re- uired in the Abington Township schools in our childhood. We deemed them ien and we deem them now to be devotional in nature, intended to inculcate eligious principles and religious beliefs. . . .

Whether or not mere reading of the Bible, without comment, is a religious eremony, a state-supported practice of daily reading from that essentially eligious text in the public schools is, we believe, within the proscription of ie First Amendment. "[T]he First Amendment rests upon the premise that oth religion and government can best work to achieve their lofty aims if ach is left free from the other within its respective sphere." *Illinois ex rel. IcCollum v. Board of Education.*

We conclude also, that the reading of the Bible as required by the Penn- ylvania statute prohibits the free exercise of religion. The sanction imposed pon the schoolteachers is discharge from their offices if they fail to observe ie requirements of the statute. It is true that no sanction is directly imposed pon the school children who fail to observe the provisions of the statute, but cannot be contended successfully that where a course of conduct is com- elled for schoolteachers and school superintendents, that they will not use very effort to cause the children committed to their guidance and care to orm an audience for the reading of the Bible according to the terms of the atute. Such compulsion may be disguised but would be effective nonetheless. llory Schempp, in his last year at the Abington Senior High School, was di- ected to attend the exercises by the Assistant Principal of his school, acting nder the authority of his office. At one time he was directed by his home oom teacher to stand during the recitation of the Lord's Prayer. The com- ulsion, on the other hand, may be subtle and thus particularly effective in espect to children of tender years, such as Roger and Donna. "The law of nitation operates, and nonconformity is not an outstanding characteristic of ildren." *Illinois ex rel. McCollum v. Board of Education.* The argument ade by the defendants that there was no compulsion ignores reality and the rces of social suasion. Moreover, attendance at school is required by the w of Pennsylvania of every child of school age under criminal penalties nposed on parents or other persons in *loco parentis.* This mandatory re- uirement of school attendance puts the children in the path of the compul- on.

The pressures of the statute and the attitudes of both school officials and the teaching staff were directed to all of the children in the Abington Township schools referred to and not to the Schempps alone, but only the latter have rebelled. We think it is misleading to suggest that because only the Schempps have objected that the statute prescribes conduct which is not compulsory both as to teachers and pupils. Indeed the lack of protest may itself attest to the success and the subtlety of the compulsion. . . .

In *West Virginia State Board of Education v. Barnette*, school children were ordered by resolution of the Board of Education to salute the flag, and refusal to do so was regarded as an act of insubordination. The resolution was objected to by members of the sect of Jehovah's Witnesses, who refused to salute the flag considering it to be a "graven image." The resolution was struck down as unconstitutional. Such a compromising of religious conscience could not be countenanced. The daily reading of the Bible, operating upon the receptive minds of children, compels them to listen with attention. This indoctrinates them with a religious sense. This under the circumstances at bar constitutes an interference with the free exercise of religion.

Even more clearly are the rights of the parents interfered with. Parents may well wish that their children develop a religious sensibility. If the faith of a child is developed inconsistently with the faith of the parent and contrary to the wishes of the parent, interference with the familial right of the parent to inculcate in the child the religion the parent desires is clear beyond doubt. The right of the parent to teach his own faith to his child, or to teach him no religion at all is one of the foundations of our way of life and enjoys full constitutional protection.

The statement of the Supreme Court in *West Virginia State Board of Education v. Barnette*, that "[T]he refusal of these persons [the plaintiffs] to participate in the [flag salute] ceremony does not interfere with or deny rights of others to do so" does not compel a contrary result, as the defendants here urge. While others may have a right to salute the flag in public schools, we think, as our previous discussion demonstrates, that there is no corresponding right to have the Bible read in public schools in the manner required.

Having characterized the morning exercises in the Abington Township schools as a religious ceremony, it requires but little citation of authority to demonstrate that these exercises, conducted under the aegis of the Commonwealth of Pennsylvania, are violative of the terms of the First Amendment. . . .

We hold the statute in issue to be unconstitutional. . . .

Final Decree

[It is] ordered, adjudged, and decreed as follows:

The defendants are perpetually enjoined and restrained from reading and causing to be read, or permitting anyone subject to their control and direction to read, to students in the public schools of Abington Township, Montgomery County, Pennsylvania, any work or book known as The Holy Bible, as directed by Section 1516 of the Pennsylvania Public School Code of March 10, 1949, P. L. 30, as amended, or as part of any ceremony, observance, exercise or school routine; provided, that nothing herein shall be construed as interfering with or prohibiting the use of any books or works as source or reference material.

By the Court,
s. JOHN BIGGS, JR.,
United States Circuit Judge
s. WILLIAM H. KIRKPATRICK,
s. C. WILLIAM KRAFT, JR.,
United States District Judges

Dated: September 16, 1959

Note: It should be borne in mind that this case has not yet been finally settled. Following this opinion of the Court, the Pennsylvania Legislature amended the act that had been declared unconstitutional by removing its "compulsory" features. The U.S. Supreme Court then "vacated" the ruling of the lower court (in the light of the amendment to the statute). Litigation will undoubtedly continue until the status of the "new" law is settled. Meanwhile, Bible-reading and the Lord's Prayer continue pending the final decision.

About Books

The Idea of Freedom: A Dialectical Examination of the Conceptions of Freedom, by Mortimer J. Adler. Doubleday & Co., Inc., 1958. 689 pp. with index. $7.50.

This tremendous book is the result of five years of concentrated effort by more than twenty scholars at the Institute for Philosophical Research in San Francisco. This is the first of a hoped-for series of philosophical examinations of the major concepts of our civilization. Dr. Adler is a well-known scholar who is one of the editors of the Great Books series, and editor in chief of *The Great Ideas, A Syntopicon*—the first basic reference work in the field of ideas.

The Nature of Conflict: Studies on the Sociological Aspects of International Tensions, by the International Sociological Association in collaboration with Jessie Bernard, T. H. Pear, Raymond Aron, Robert C. Angell. UNESCO, 1957. 314 pp. with index. Paper, $3.00.

This important book presents an up-to-date survey and evaluation of research by sociologists and social psychologists into the nature, conditions, and implications of human conflict, and particularly conflicts between nations. The usefulness of the book is that it attempts to describe and analyze, impartially and objectively, the situations in which policy makers have to deal in international relations, and to make known the relevant facts. This is an important volume in the tensions and technology series published by UNESCO.

Faith and Education, by George A. Buttrick. Abingdon Press, 1957. 136 pp. with index. $2.00.

This is a timely and thought-provoking book that critically examines present-day college and university education—its secular, barren, and often haphazard course, its less-than-benign influence, and its deep need for a fundamental vitalizing faith. In the four chapters of this small book Dr. Buttrick discusses: I. Person, II. Community, III. Failure, IV. Destiny. The author is well-known, having served as University preacher at Harvard University.

American Society, by Don Martindale. D. Van Nostrand Company, Inc., 1960. 570 pp. with index. $6.75.

Dr. Martindale is Professor of Sociology at the University of Minnesota. The present volume is a sociologist's description of the phenomenon of mass society in America. The author marshals historical and comparative materials that relate the distinctive and divergent aspects of American society to the development of Western civilization. The book portrays the dramatic changes in

wentieth-century America with their accompanying liquidation of many traditional values. Dr. Martindale, a sound sociologist, views the emergence of mass society in the American scene from its positive side.

Religion and the State University, edited by Erich A. Walter. The University of Michigan Press, 1958. 323 pp. $6.50.

The state cannot champion religion; the university cannot ignore it. This makes anomalous the position of religion in the American state university. The contributors to the present volume are such well-known leaders of authority in both religion and education as Roland H. Bainton, Kenneth E. Boulding, Theodore M. Greene, Will Herberg, Seward Hiltner, John Courtney Murray, S. J., George N. Shuster, Chad Walsh, Helen C. White. The result is the lively and useful discussion of an important and increasingly urgent question—the place of religion in the state university.

From Empire to Nation: The Rise to Self-Assertion of Asian and African Peoples, by Rupert Emerson. Harvard University Press, 1960. 466 pp. with index. $7.75.

The author of this very important book is Professor of Government at Harvard University. In the present volume he analyzes the emergence of national self-assertion and independence among the peoples of the newly developing areas of Asia and Africa. His investigation is focused upon the difference between the emerging national patterns of Asia and Africa, and the classical models of national autonomy in Western Europe. The new insights developed in this careful study clarify the relation of nationalism to democracy and also serve to illuminate the course of history and present developments in Asia and Africa.

This is a most pleasant book to hold and to read, and a most necessary book to examine on the part of all who would aspire to an understanding of what is happening in the areas of rapid change.

Moral Values in Public Education: Lessons from the Kentucky Experience, by Ellis Ford Hartford. Harper & Brothers, 1958. 338 pp. with index. $4.00.

The "Kentucky Movement" is an informal label for an emphasis upon moral and spiritual values in public education. The present book is a well-documented description of the working-out of the idea and of some of its results and lessons for an important responsibility of public education. The book affirms the point of view that the teaching of moral values is appropriate and timely for the public schools in a pluralistic, diverse, democratic society. Dr. Hartford is Professor of Education at the University of Kentucky and has participated actively in the Kentucky Movement since its inception.

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